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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,505	08/15/2001	Amiya kumar Mishra	006175-030	8230

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EXAMINER

KIM, CHRISTOPHER S

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 12/16/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/929,505

Applicant(s)

MISHRA, AMIYA KUMAR

Examiner

Christopher S. Kim

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Request for reconsideration filed June 16, 2003 is acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "second speed different than said first speed" recited in claims 4, 5, 14 and 17; the "proportional control valve" recited in claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

4. Claims 1-3, 11 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Palmer (3780,955).

Palmer discloses a material spreader comprising: a trough 36, 36A; at least two conveying mechanisms 34; a hydraulic motor 86.

The recitation "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. *In re Hutchison*, 69 USPQ 138. Palmer's device is "adapted to" so perform in that it has the ability to so perform by running hydraulic motor 86 in reverse.

***Claim Rejections - 35 USC § 103***

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer (3780,955).

Palmer discloses the limitations of the claimed invention with the exception of the first and second speeds which are different. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have operated the hydraulic motors 86 at different speeds in the device of Palmer to vary the amount of materials distributed between the left and right sides of the vehicle.

6. Claims 5-9, 12-14 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer (3780,955) in view of Gruben (3,559,893).

With respect to claims 5, 6, 8, 9, 12, 13, 14 and 17, Palmer discloses the limitations of the claimed invention with the exception of the auger and spinner. Gruben discloses augers 44a, 44b, 44c and spinners 82 having chutes 95. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the lateral continuous belts of Palmer with the auger and spinner of Gruben to control the throw of the material (Gruben, column 4, lines 36-40).

With respect to claim 7, a proportional control valve is inherent in the device of Palmer. See Palmer, column 5, lines 60-65.

7. Claims 1-14 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Gruben (3,559,893) in view of Palmer (3780,955).

With respect to claims 1-9, 11-14 and 17, Gruben discloses a material spreader comprising: a trough 42; at least two conveying mechanisms 44a, 44b; a hydraulic motor 62. Gruben differs from what is being claimed in the two conveying mechanisms being independently driven. Gruben discloses one hydraulic motor 62 driving both augers 44a and 44b. Palmer teaches two conveyors 34 driven independently by hydraulic motors 86. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have independently driven the augers of Gruben using two separate augers and hydraulic motors as taught by Palmer to enable folding of the lateral conveyors.

With respect to claim 10, Gruben in view of Palmer discloses the limitations of the claimed invention with the exception of the chain. Gruben discloses a linkage 97 to adjust chute 95. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the linkage of Gruben in view of Palmer with a chain to ease manipulation and allow for compression.

### ***Response to Arguments***

8. Applicant's arguments filed October 3, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the claimed features need not be shown for understanding, 37 CFR 1.83(a) explicitly requires that the drawings must show every feature of the invention specified in the claims. The rule does not provide a "need for understanding" conditional requirement.

In response to applicant's argument that the prior art conveying mechanism is not capable of being driven in an opposite direction, Palmer's device is "adapted to" so perform in that it has the ability to so perform by running hydraulic motor 86 in reverse.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (703)


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308-8336. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703) 308-2087. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK  
December 14, 2003